

**FILED**

**DECEMBER 26, 2007**

KAREN S. MITCHELL  
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

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YOVANI CRUZ PONCE, PRO SE, §  
SPN 11235, §  
Booking No. 2007040250, §  
I.C.E. A72838482, §  
Previous TDCJ-CID No. 1106649, §  
§  
Plaintiff, §  
§  
v. § 2:07-CV-0156  
§  
§  
DEAN NAYLOR, §  
§  
Defendant. §

**REPORT AND RECOMMENDATION**

Plaintiff YOVANI CRUZ PONCE, acting pro se and while a detainee at the Dallam-Hartley County Jail, has filed suit pursuant to Title 42, United States Code, section 1983 complaining against the above-referenced defendants and has been granted leave to proceed in forma pauperis. The instant cause, cause no. 4:07-CV-02243, was transferred from the United States District Court for the Southern District of Texas, Houston Division, to the United States District Court for the Northern District of Texas, Amarillo Division, and was opened as cause no. 2:07-CV-0156.

On December 21, 2007, plaintiff submitted a letter which is construed to be a motion to dismiss. By this letter, plaintiff requests to dismiss “case 4:07-CV-02243<sup>1</sup> civil action H-07-02243. 2:07-CV-0155.” It appears plaintiff is requesting to dismiss the instant cause, as well as cause no. 2:07-CV-0155. Nevertheless, given the possibility that plaintiff has not clearly identified the case or

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<sup>1</sup>Cause no. 4:07-CV-02237 was transferred from the United States District Court for the Southern District of Texas, Houston Division, to the United States District Court for the Northern District of Texas, Amarillo Division, and was opened as cause no. 2:07-CV-0155.

cases he wishes to dismiss, this Report and Recommendation will issue, instead of an immediate Order of Dismissal.

No answer or responsive pleading has been filed by the proposed defendants. Consequently, a grant of plaintiff's motion to dismiss appears appropriate under Rule 41, Federal Rules of Civil Procedure.

It is the recommendation of the Magistrate Judge to the United States District Judge that the Civil Rights Claim filed pursuant to Title 42, United States Code, Section 1983, by plaintiff YOVANI CRUZ PONCE be DISMISSED WITHOUT PREJUDICE pursuant to Rule 41(a)(1), Federal Rules of Civil Procedure.

**INSTRUCTIONS FOR SERVICE**

The United States District Clerk is directed to send a copy of this Report and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 26th day of December, 2007.



CLINTON E. AVERITTE  
UNITED STATES MAGISTRATE JUDGE

**\* NOTICE OF RIGHT TO OBJECT \***

Any party may object to these proposed findings, conclusions and recommendation. In the event a party wishes to object, they are hereby NOTIFIED that the deadline for filing objections is eleven (11) days from the date of filing as indicated by the "entered" date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(B), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(D). When service is made by mail or electronic means, three (3) days are added after the prescribed period. Fed. R. Civ. P. 6(e). Therefore, any objections must be filed on or before the fourteenth (14<sup>th</sup>) day after this recommendation is filed as indicated by the "entered"

date. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b); R. 4(a)(1) of Miscellaneous Order No. 6, as authorized by Local Rule 3.1, Local Rules of the United States District Courts for the Northern District of Texas.

Any such objections shall be made in a written pleading entitled “Objections to the Report and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).